

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CR. NO. 1:00-CR-300  
:   
V. : (Judge Rambo)  
:   
ERIC SANCHEZ : (Electronically Filed)

**GOVERNMENT'S RESPONSE OPPOSING DEFENDANT'S MOTION FOR RELEASE  
PENDING DISPOSITION OF APPEAL PURSUANT TO 18 U.S.C. § 3143**

AND NOW, comes the government through Christy H. Fawcett, Assistant U.S. Attorney, and files the within Response Opposing Defendant's Motion for Release Pending Disposition of Appeal Pursuant to 18 U.S.C. § 3143.

1. The defendant previously pleaded guilty to criminal conspiracy to distribute and possess with intent to distribute 50 grams and more of crack cocaine. On August 30, 2002, the Court sentenced him to a term of imprisonment of 120 months.

2. On March 12, 2008, the Court denied the defendant's motion seeking modification of his term of imprisonment pursuant to 18 U.S.C. § 3582. The defendant's appeal of the Court's denial of his motion is pending before the Third Circuit Court of Appeals. He is represented by Ronald Krauss, Esquire.

3. On September 11, 2008, the defendant filed a *pro se* document entitled "Motion of Defendant for Release Pending Disposition of Appeal, Pursuant to 18 U.S.C. § 3143". The defendant's motion, in part, cites the portion of 18 U.S.C. § 3143 which provides that one of the factors to be considered in

determining whether a defendant should be released pending disposition of an appeal is whether the appeal is likely to result in "a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process." 18 U.S.C. § 3143 (b) (1) (B) (iv).

4. In his motion, the defendant argues that the government concedes that his sentence was not the product of a statutorily-mandated minimum term and thus "a reversal is imminent." Defendant's Motion, 2. Primarily for this reason, the defendant believes that he should be released from incarceration pending disposition of his appeal.

5. The defendant correctly cites the applicable statutory law. However, the defendant's statements that the government has "conceded" that he was not sentenced to a statutorily-imposed minimum term of imprisonment and that "a reversal is imminent" are inaccurate.

6. To the contrary, in her brief filed with the Third Circuit Court of Appeals, counsel for the government stated that the record is unclear as to whether the defendant was sentenced to a mandatory minimum term of imprisonment. However, counsel for the government noted that it is very apparent from the record of the case that the defendant's 10-year sentence was the product of a binding plea agreement that had been accepted by the Court. The government's counsel further explained that because the appellate court may affirm the district court's decision on any grounds that are

supported by the record, the Court's denial of the defendant's request for a sentence reduction should be affirmed.

7. The government's Third Circuit brief fully explains the support in both the record and the case law for its position. A copy of that brief is attached to this response as Exhibit "A" and made a part hereof.

8. Accordingly, the defendant's Third Circuit appeal is not likely to result in a reduced sentence to a term of imprisonment less than what the defendant will have actually served.

**WHEREFORE**, the government requests the Court to enter an order denying the Motion of Defendant for Release Pending Disposition of Appeal, Pursuant to 18 U.S.C. § 1343.

Respectfully submitted,

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United States Attorney

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

That this 18th day of September 2008, she served a copy of the attached

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by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

**Eric Sanchez** - #10667-067  
FMC Devens, Unit J-B  
P.O. Box 879  
Ayer, MA 01432

s/Christina L. Garber  
Christina L. Garber  
Legal Assistant